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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,024	04/01/2004	Christopher J. Hess	14831Z (ETH-1541)	9323
23389 7590 04/14/2009 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
04/14/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/816,024

**Applicant(s)**

HESS ET AL.

**Examiner**

Vy Q. Bui

**Art Unit**

3773

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Claims 17-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/02/2008.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-4, 7-9, 11-13, 16, 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bennette et al.-6,019,771.

As to claims 1-4, 8, 11-13, 16, 22-23, Bennette-'771 (F. 1-2, for example) discloses a vessel harvesting device comprising hollow shaft 2, handle 1, bipolarized top portion 5 (positively polarized and rigidly attached to the vessel harvesting device) having cutting edge/raised cutting means 9 defining 1<sup>st</sup> opening and bottom portion 4 (negatively polarized) having cutting edge/raised cutting means 7 defining 2<sup>nd</sup> opening, manual actuator button disposed on handle 1 for reciprocating top portion 5 relatively to bottom portion 4 for ligating and transaction side branch vessels substantially as recited in the claims.

As to claim 7, manual actuator button or actuating means must inherently includes stops on handle 1 limiting translation motion between top portion 5 and bottom portion 4 to prevent the top and bottom portions from separation from each other.

As to claim 9, bottom portion 4 is axially biased or constrained against top portion 5.

2. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Konou et al.-5,759,150.

As to claims 1 and 11, Konou-'150 (F. 20-21, for example) discloses a vessel harvesting device comprising hollow shaft 134, handle 131, bipolarized top portion 135 (rigidly attached to the vessel harvesting device) having hook-shaped cutting edge/raised cutting means defining 1<sup>st</sup> opening and bottom portion 4 having hook-shaped cutting edge/raised cutting means 7 defining 2<sup>nd</sup> opening, manual actuator button 140 disposed on handle 131 for reciprocating top portion 135 relatively to bottom portion 136 for ligating and transaction side branch vessels substantially as recited in the claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bennette et al.-6,019,771.

Bennette-'771 (F. 1-2, for example) discloses a vessel harvesting device substantially as recited in the claim, except for a motor to move the manually actuating button. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a motor to move the bottom portion 4 relatively to top portion 5, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. In re Venner, 120 USPQ 192.

2. Claims 5-6, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konou et al.-5,759,150.

As to claims 5, 14, Konou-'150 discloses substantially the claimed invention, except for two sets of electrodes as recited in the claims. However, Konou-'150 (Fig. 20-22B) discloses using one set of electrodes 135 and 136 for ligating and transaction of branch vessel on one side of a harvesting vessel C. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide another set of electrodes similar to the set of electrodes 135 and 136 at another side of the harvesting vessel C as this configuration would provide an extra set of electrodes for cutting a branch vessel as one desires.

As to claims 6, 15, Konou-'150 (C. 46, II. 37-48) discloses substantially the claimed invention including providing high frequency current for bipolar electrodes 917 and 918. Radio frequency is also a high frequency. It have been obvious to one having ordinary skill in the art at the time the invention was made to provide a high frequency current such as a radio frequency to Konou-'150 device as RF is well known high frequency current.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/  
Primary Examiner, Art Unit 3773